IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/11/2003

Coram

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

W.P.No.1241 of 1997
AND
W.M.P.NO.2108 OF 1997

S.Indrani .. Petitioner

-Vs-

1. Government of Tamil Nadu,
represented by Secretary to
Government, Education,
Science and Technology (B.1) Department,
Fort St.George,
Chennai-600 009.

2. The Director of Elementary Education,
College Road,
Chennai-600 006.

3. The District Elementary
Education Officer,
Chennai-600 006.

4. The Assistant Education Officer,
Mylapore at Tenampet,
Chennai-600 018.

5. Sabhesan Bala Brindavan Primary
School, 31, Thiruvengadam Street,
R.A.Puram, Chennai-600 028,
rep. by its Correspondent and
Headmistress .. Respondents

Petition under Article 226 of the Constitution of India
praying to issue a writ of Certiorarified Mandamus, for the reasons as stated therein.

For Petitioner : Mr.S.Silambannan

For Respondent : Mr.MGH. Varadarajan, AGP
for R1 to R4
Mr.S.B.S.Raman for

M/s.S.B.S.Raman & Associates
for R5
:ORDER
The petitioner seeks for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent made in his Lr.No.27793/B1/94-9 dated 13-12-1995 confirming the order of the Asst.Education Officer dated 31-1-1991 made in proceedings No.A.TM.No.97/A/91, quash the same and direct the respondents 1 and 5 to fix the scale of pay of the petitioner at Rs.1,760/- with effect from 7-11-1 988 in accordance with G.O.Ms.No.304, Finance (Pay Commission) dated 28-3-1990 as applicable to persons who had exercised their option on or before 30-6-1990 and pay all arrears with attendant benefits.
2. The petitioner joined as Secondary Grade Assistant in the Municipal Higher Elementary School at Tiruvallur in the year 1965 and as Higher Grade Assistant in the fifth respondent school on 25-9-1967, and on 1-10-1970, the said post was upgraded as Secondary Grade post and she became a Secondary Grade Assistant in that school. In November, 1978, she was moved to the Selection Grade. Subsequently, she acquired additional qualifications, namely, M.A., M.Ed., and got four advance increments and two incentives in the year 1986. In view of the additional qualification, her basic pay was fixed at Rs.1,160/- with effect from 1-10-1996. On 1-10-1987, her pay was fixed in the basic pay of Rs.1,195/- which came to be periodically revised. On 7-11-1988, the petitioner was sanctioned the Special Grade and was fixed at Rs.1,265/- in the time scale of pay of Rs.780-35-1025-40-1385. By G.O. Ms.No.666, dated 27-6-1989, revision of scales of pay and allowances came to be made and since the petitioner exercised her option on 18-8-1989 to switch over to revised scale of pay with effect from 1-6-1988 as per G.O.Ms.No.666, her pay was re-fixed at Rs.1,530/- in the time scale of pay of Rs.1320-30-1560-40-2040.
By subsequent Government Order in G.O.Ms.No.735, dated 20-7-1989, instructions regarding fixation of pay scale came to be issued and due to which, the petitioner's pay was re-fixed at Rs.1,600/- in the scale of pay of Rs.1350-30-1440-1800-50-2200 with effect from 7-11-1988. It is stated that her pay was fixed at Rs.1,640/- on 1-10-1989. Thereafter, by G.O.Ms.No.304, dated 28-3-1990, the scales of pay for Selection/Special Grades were revised and para 9 of the said G.O. provided for exercise of option in respect of those employees who had already moved into the Selection Grade/Special Grade prior to 27-6-1989. It provided that option should be exercised on or before 30-6-1990 and if no option was exercised before the stipulated date, the pay would be fixed in the revised pay scale of Selection Grade/Special Grade with effect from 1-6-1988.

4. According to the petitioner, the fifth respondent school failed to communicate the implication of the above said G.O.Ms.No.304 dated 28-3-1990 and the option to be exercised and only when her pay was reduced from 1640/- to 1550/-, it came to light that it was by the implication of the above said G.O.Ms.No.304 and due to the failure in exercising the option before 30-6-1990. Thereafter, the petitioner was repeatedly making representations right from 19-11-1990, contending that the fifth respondent arbitrarily reduced her scale of pay vindictively, as the Headmistress of the fifth respondent school at that point of time had a grudge against the

petitioner as the petitioner was drawing higher pay than that of the Headmistress by virtue of her additional qualifications. The petitioner, therefore, claimed that her pay should have been fixed at Rs.1,760/- with effect from 7-11-1988 from which date, she moved into Special Grade. Once the petitioner' s claim was rejected by the fourth respondent on 31-1-1991 which was also confirmed by the second respondent on 7-4-1993, the petitioner gave a further representation on 24-11-1993 to the second respondent, who forwarded the same to the first respondent which was also rejected by the first respondent. It is stated that the order of the second and fourth respondents were on the ground that the petitioner failed to exercise her option before 30-6-1990. In one of the communications, dated February, 1994 in No.1265/A/91, the fourth respondent who is stated to have verified the claim of the petitioner stated that the petitioner had no knowledge of G.O.Ms.No.304 as it was not duly intimated by the fifth respondent and so saying, he recommended the petitioner's case to the second respondent that the petitioner deserves to be extended with the said benefits.

5. According to the fifth respondent, the G.O.Ms.No.304 dated 28-3-1990 was orally made known to the teaching staff on 6-6-1990 and the failure of the petitioner to exercise her option on or before 30-6-19 90 cannot be attributed to the fifth respondent institution. To support the said version, the fifth respondent has come forward with additional affidavits sworn to by 13 teachers dated March 1997. The said affidavits also state that the Headmistress Tmt.N.Janaki announced about the above said G.O. on 6-6-90 to all of them including the petitioner after the reopening of the school. They also seek to state that it was not the customary practice in the school for any circular to be issued to the teaching staff in regard to the various Government Orders following Pay Commission Recommendations.

6. After hearing the learned counsel for the respective parties, and on a perusal of the G.O.Ms.No.304 dated 28-3-1990, I find that prior to the issuance of the said G.O., G.O.Ms.No.666 dated 27-6-1989 came to be issued by which, the first respondent decided to accept the recommendations of the V Pay Commission subject to certain changes in respect of certain categories of posts resulting in the introduction of 23 standard revised scales of pay as against 17 standard revised scales of pay and one nonstandard revised scale of pay. In para 9 of the said G.O., while dispensing with the present system of selection, Special and Senior Grades and advancement to the next higher posts (Special Temporary posts), the revised system t o be followed has been set out. Further under G.O.Ms.No.304 dated 28-3-1990, in partial modification of orders issued in para 9 of G.O.Ms.No.666 dated 27-6-1989 , the Government directed that the scheme of Selection Grade and Special Grade to be allowed to all the employees eligible for movement to Selection Grade and Special Grade as communicated in the Annexure-I to the present Government Order replacing the existing Appendix-VII to G.O.Ms.No.666. Thus, the Selection Grade/Special Grade which came to be removed under G.O.Ms.No.666 dated 27-6-1989 came to be restored under G.O.Ms.No.304 dated 28-3-1990.

7. Para 8 of G.O.Ms.No.304 dated 28-3-1990 provides that these orders would take effect from 1-6-1988 for those who have moved to Selection Grade/Special Grade prior to 27-6-1989 and that arrears of pay and allowances consequent on the issuance of the present G.O. to be regulated as per paragraph 8(vii) of G.O.Ms.No.666 dated 27-6-1989. In para 6 of

G.O.Ms.No.304, the revised Selection Grade/Special Grade of scale of pay were indicated as in Annexure-I along with Fitment tables and illustrations which were given in Annexure II and III. In para 9 of G.O.Ms.No.304 it is stated as under:

"9. Employees already in the selection grade/special grade prior to 27th June 1989 shall be permitted to exercise revised option to come over to the revised scales of pay if they so desire. The option shall be exercised on or before 30th June 1990. Option once exercise shall be final. If no option is exercised before the stipulated date the pay shall be fixed in the revised scales of pay of selection grade/ special grade with effect from 1st June 1988."

8. The petitioner, by virtue of her service put in, even prior to G.O.Ms.No.666 dated 27-6-1989 had already moved to the Special Grade as early as on 7-11-1988. Therefore, paragraphs 8 and 9 of G.O.Ms.No.304 dated 28-3-1990 were applicable to her. In such circumstances, admittedly, the reduction in her scale of pay as claimed by her came into being by virtue of her failure to exercise the option before 30-6-1990.

9. While the petitioner would contend that she was not made aware of G.O.Ms.No.304 dated 28-3-1990, the fifth respondent would contend that the implication of the G.O. was orally communicated to the teaching staff in the Staff room on 6-6-1990 i.e. after the reopening of school and soon after the Assembly. To support the said stand, the fifth respondent filed counter a affidavit along with supporting affidavits of 13 other teachers sworn to by them in the month of March, 199 7. The details of the 13 teachers as to whether they had moved into Selection Grade/Special Grade either on or before 27-6-1989 have not been stated. It is not known whether any of the said 13 teachers was given any benefit by virtue of acquiring the status as Selection Grade/Special grade as per G.O.Ms.No.304 dated 28-6-1990.

10. Under Section 18(1)(b) of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973, it is specifically provided that it is the responsibility of the School Committee and the Educational Agency to appoint teachers and other employees of private schools, fix their pay and allowances and define their duties and the conditions of their service. Under Section 14 of the Act, the payment of grant is dependent upon the rules, orders and notifications issued by the Government from time to time. Under Section 27 of the Act, the pay and allowances of any teacher and other person employed in any private school should be paid on or before such day of every month in such a manner by or through such Authority, Officer or person as may be prescribed. Under Rule 19 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 the procedure for pay and allowances to teachers and other persons employed in private schools has to be made as per Annexure III.

11. Therefore, a conspectus reading of the various provisions of the Act as well as the Rules make it clear that it is the duty as well as the responsibility of the fifth respondent institution to ensure that the pay of every teacher or other person employed in its institution is correctly fixed and paid in accordance with the above said provisions. Admittedly, the fifth respondent school is in existence for more than three decades. Therefore, the stand of the fifth respondent that a vital Government Order fixing the scale of pay of Selection Grade/Special Grade teachers was orally communicated is quite amusing. The supporting affidavits sworn to by the said

13 teachers cannot be accepted in such a situation. It is the bounden duty and responsibility of the fifth respondent to state clearly that the benefits under G.O.Ms.No.304 dated 28-3-1990, its implications and the conditions to be complied with for availing the benefits were clearly set out and indicated in a proper manner either by communicating to individual teachers in writing or atleast by displaying the said notification in the concerned Notice Board was carried out and that in spite of such exercise, if the concerned teacher had not complied with the conditions of the G.O., then only any blame can be thrown upon the concerned teacher for any short fall in the payment of the salary payable to such teacher. Therefore, I am unable to accept the stand of the fifth respondent institution that an oral announcement was made about the G.O.Ms.No.304 dated 28-3-1990 in the staff room on 6-6-1990 and therefore, the petitioner's failure to exercise her option before 30-6 -1990 cannot be attributed to the fifth respondent institution.

12. Further, the petitioner has also specifically averred in ground Nos.(G) (I) and (J) to the effect that she never exercised the option to her detriment as has been mentioned in the statement of fixation of pay made by the fifth respondent on 4-6-1990. Significantly, in the counter affidavit, there is no whisper as to the above said averments made by the petitioner either about the grudge alleged against the Headmistress of the fifth respondent school or about the non exercise of option on 4-6-1990. When the consistent stand of the fifth respondent school that the G.O.Ms.No.304 dated 28-3-1990 was made known to the staff only on 6-6-1990, it is not known as to how in the pay fixation statement prepared by it on 2-7-1990, it came to be mentioned that the petitioner exercised her option even two days earlier, that was on 4-6-1990. Therefore, it is clearly established that the fifth respondent school with some mala fide motive deliberately with a view to deprive the petitioner of the monetary benefits that was made available under G.O.Ms.No.304 dated 28-3-1990 made it appear as though the petitioner on her own did not want to avail the benefits under the said G.O. When the exercise of option before 30-6-1990 would entail the petitioner to avail better monetary benefits under G.O.Ms.No.304 dated 28-3-1990, even assuming, as per the endorsement contained in the pay fixation statement, she exercised her option on 4-6-1990, there is no reason why she was not accorded better benefit under the said G.O. The exercise of option is only to avail the benefits and not to withdraw from it. Therefore, going by the pay fixation statement as contained in the service record, if the petitioner had exercised the option on 4-6-1990, there is no reason why the benefit was not accorded to the petitioner, instead a reduction in the pay scale was made by the fifth respondent. Significantly while the option exercised by the petitioner under the other Government Order in G.O.Ms.No.73 5 dated 20-7-1989 finds a place in the service book, the so called alleged option dated 4-6-1990 does not find a place in the service book. Therefore, all was not well with the fifth respondent school when it came to the question of pay fixation of the petitioner pursuant to G.O.Ms.No.304 dated 28-3-1990. When such a conclusion is inescapable, the blame is to be borne only by the fifth respondent school and in which event, it is for the fifth respondent school to make good the loss suffered by the petitioner.

13. Therefore, while setting aside the orders impugned in this Writ Petition, the fourth respondent is directed to fix the scale of pay of the petitioner at Rs.1760/- with effect from 7-11-1988 in accordance with

G.O.Ms.No.304 dated 28-3-1990 and work out the benefit payable to the petitioner and pass appropriate orders directing the fifth respondent school to pay the amounts so determined with all consequential benefits by stipulating a time limit and make it a condition for salary grant for the month succeeding the date of its order. The fourth respondent shall pass such orders within two months from the date of production/receipt of copy of this order and for the purpose of carrying out the above said exercise, an opportunity may be given to the petitioner as well as to the fifth respondent before passing final orders.

In the result, the Writ Petition succeeds and the same is allowed with the above directions. No costs. Consequently, W.M.P. is closed.

Index:Yes
Internet: Yes
suk

1. Government of Tamil Nadu,
represented by Secretary to
Government, Education,
Science and Technology (B.1) Department,
Fort St.George,
Chennai-600 009.

2. The Director of Elementary Education,
College Road,
Chennai-600 006.

3. The District Elementary
Education Officer,
Chennai-600 006.

4. The Assistant Education Officer,
Mylapore at Tenampet,
Chennai-600 018.

5. Sabhesan Bala Brindavan Primary
School, 31, Thiruvengadam Street,
R.A.Puram, Chennai-600 028,
rep. by its Correspondent and
Headmistress